



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 4175-00
20 July 2001

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 June 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 28 June 1993, the Physical Evaluation Board made preliminary findings that you were unfit for duty because of mechanical low back pain, which it rated at 0% disabling. You accepted those findings, and were discharged with entitlement to disability severance pay on 15 November 1993. On 7 October 1994, the Department of Veterans Affairs (VA) granted you a 40% rating for a lower back condition. The condition was rated under code 5299-5293, by analogy to intervertebral disc syndrome.

The Board noted that ratings assigned by the military departments are fixed as of the date of separation or permanent retirement. The fact that the VA rated your condition at 40% from the day following your separation from the Navy is not probative of error or injustice in your case, because the rating was based on the results of an examination conducted more than eight months after you were discharged. In addition, the available records do not support the conclusion that your condition was equivalent to severe intervertebral disc syndrome, with intermittent relief, which is required for the 40% rating under the code selected by the VA. As you have not demonstrated that you were entitled to a disability rating of 30% or higher,

there is no basis for granting your request. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director